Supreme Court of the United States

OCTOBER TERM, 1943

No. 576

AMY MEEKS,
Petitioner,

versus

ROLAND L. TAYLOR, Individually, and ROLAND L. TAYLOR, as Trustee, et al.
Respondents.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

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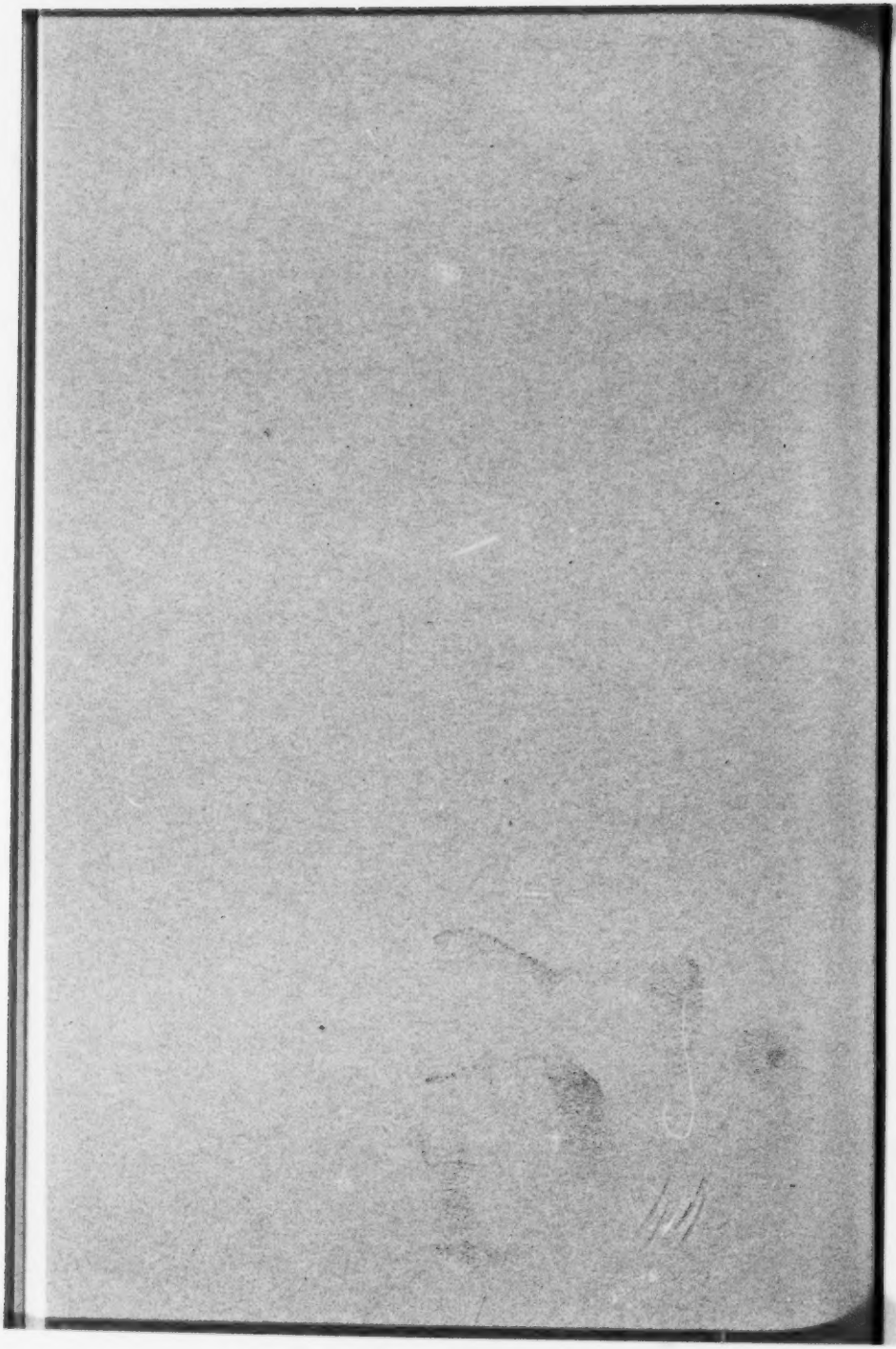

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ET AL,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

The petition of Amy Meeks, respectfully shows:

That she filed her petition in equity to the October Term, 1941 of the Superior Court of Coffee County, Georgia (R. 1.) to cancel an oil and mineral lease, covering three tracts of her land, upon the ground that the same was a forgery. The case was removed to the District Court of the United States, for the Southern District of Georgia, Waycross Division (R. 9). The lower Court cancelled the lease in part and confirmed it in part. Whereupon an appeal was taken to the United States Circuit Court of Appeals for the Fifth Circuit, and that Court modified and affirmed such judgment on October 20, 1943. (R 102) A petition for rehearing was filed, and denied December 3, 1943. (R 122)

The record shows that for the past several years considerable explorations have been carried on for the discovery of oil in the section of Georgia, wherein the land in question lies. Thousands of acres have been leased and some drilling done. The land involved is in the midst of such activities. The questions raised on this record, we submit, are of great public concern, as the discovery of new oil fields is of national and world importance; and the issues here involve title to an oil lease which should be correctly adjudicated, and one not be allowed to benefit by his own wrong in his eagerness to gain an advantage in this field.

Filed herewith is a certified copy of the entire record in the lower Court, including the decision of the Circuit Court of Appeals, the motion for rehearing, and all other proceedings therein.

The record shows (and we quote from the dissenting opinion of Judge McCord, Record pages 107, 108) that:

> "An agent of the appellee sought out the husband of the appellant and for the cash consideration of one dollar secured a purported oil and gas lease covering three tracts of land belonging to appellant. After an agreement had been reached with the husband, he took the lease into the house and later returned and informed appellee's agent that Mrs. Meeks had signed it. The agent signed the instrument as a witness and secured a Notary Public to certify to an acknowledgment of its execution. It is admitted that neither the agent nor the Notary Public saw Mrs. Meeks sign the lease. (This was April 14, 1937 R. 1.) Indeed, it is without dispute that she did not sign the lease, that she was not at home at the time, and that her name was written by her hus-

band who had no authority to sign for her. In about three weeks Mrs. Meeks found out about the lease. She at once notified the lessee that the lease was a forgery; that she had not signed it or authorized its execution; and that she repudiated it. Mrs. Meeks thereafter made arrangements for two leases on the property, but the prospective lessees refused them when they learned that a lease covering this property had been recorded. She later secured a loan of $1200.00 from the Land Bank. (In May 1941, some 4 years after the date of lease, R. 58). She could not effect this loan with the unauthorized lease sticking out on the record like a sore thumb, so she recognized the lease in the security deed and assigned to the bank all rights under it.

"After the loan had been consummated, the appellee came forward with its forged instrument and offered to pay a rental and a certain sum of money which it did not owe to Mrs. Meeks and which had never been the subject of a contract with her. When the payment was refused by appellant, the money was paid into court. Appellant thereby, notwithstanding the forgery of Meeks, the false witnessing of its agent and his improper procurement of the Notary's certificate, sought to make the invalid lease a valid one by virtue of the recognition contained in the security deed from Mrs. Meeks to the Land Bank. When appellee sought to have the lease recognized, Mrs. Meeks immediately paid off the security deed." (Sept. 18, 1942, R. 60).

On this state of facts, the District Court held the lease valid in part, and void in part; but the U. S. Circuit Court of Appeals went even further, and by a divided Court, held that the lease had been ratified and therefore it was valid in

whole, and after modification of the decree, affirmed the judgment of the lower court (R. 102-106).

The Circuit Court of Appeals erred in holding in effect that a person could initiate and consummate the forging of an oil and mineral lease upon lands, and then interpose a claim of equitable ratification by the one who owned the land because some four years after the forgery, and after the filing of this suit, that owner borrowed certain money and executed a security deed to the land to secure such loan, in which deed it was recited that it was made subject to the forged lease and also that "First party further specifically assigns, transfers and conveys unto second party, all rights, royalties, bonuses, dividends and other income **that may accrue to first party by reason** of the aforesaid oil, gas and mineral lease". (Black face supplied). And especially when the maker of the security deed was always insisting that the oil lease was a forgery. In about three weeks when Mrs. Meeks found out about the lease, she at once notified the lessee that the lease was a forgery; that she had not signed it or authorized its execution, and that she repudiated it; and thereupon instituted the proceedings which are involved in this litigation to cancel such oil and mineral lease.

The decision of the lower court was in part, (one Judge dissenting) as follows: (R 102)

> "She was not bound by the lease until on May 29, 1941, she borrowed money using the lease as part security. The deed she then signed was a solemn act in writing, duly attested and recorded. It not only recited the existence of the lease, referring to its place of record, and that the land was conveyed subject to it,

but also transferred the rents and royalties which might accrue under it. There could be no rents and royalties unless the lease was in force, and her conveyance of them necessarily meant that she adopted the lease and ratified it. She could not thus accept its benefits without accepting also its burdens. Humble Oil & Ref. Co. vs. Clark, 87 S. W. (2) 471; Turner vs. Hunt, 116 S. W. (2) 688."

McCord, Circuit Judge, dissenting, in addition to what is quoted supra said: (R 107)

"Any recognition of the forged lease was made solely for the purpose of securing a loan and was made in the contract between Mrs. Meeks and the Land Bank—a contract to which appellee was not a party. There was no communication by Mrs. Meeks to appellee of a recognition or ratification of the lease, and no benefit of any kind flowed from appellee to Mrs. Meeks, who has never received, or agreed to receive, one cent as compensation for the lease.

'On this record I think it clear that so long as the forged lease was of record Mrs. Meeks could not lease or sell her land, and no matter how great or urgent her need she could not sell or mortgage the properties without making such conveyance subject to the forged instrument."

"Appelle knew full well that the lease was forged and invalid and that its own agent had participated in its procurement, and I think that to permit it to come in and claim that the security deed in favor of the bank, and to which it was not a party, amounts to affirmance

and ratification of the fraud, is in effect to permit it to gain an advantage by its own wrong."

"No benefit has flowed from appellee to Mrs. Meeks, and on the facts I think this case stands apart from those cited in the majority opinion. I am of the opinion the lease should be declared void in its entirety. I respectfully dissent."

It is insisted that the question is of public concern, and of gravity and importance, and seriously affects the administration of justice, and the majority decision of the lower Court also runs counter to the law and the decisions of the State of Georgia. The statutory provision which sustains this application is: [illegible]. S. C. A. 347.

The decision was contrary to the rule laid down in Erie Railroad Company v. Tompkins, 304 U. S. 64, 82 L. Ed., 1188; and Meredith v. City of Winterhaven, 88 L. Ed. page 1, requiring Federal Courts to follow State laws and State decisions.

It is in conflict with Sections 67-1301 and 67-1306 of the Code of Georgia, which show the character of title passing under a security deed. Also, Citizens Mercantile Co. v. Eason, 158 Ga., 610, where it was held, "Payment of the debt secured by the deed vests in the grantor a perfect title to the title thereby conveyed", because at the time of the trial there was no title in any one except Mrs. Meeks.

Also, the decision of the lower Court is directly in conflict with the rule laid down in Cruger v. Tucker, 69 Ga., at page 562, where it was held:

"In the case of Doe, ex dem. of Lamar, vs. Turner, tenant in possession, this Court said: 'The recitals in a deed only bind the parties to that deed and those claiming under them, but are not evidence against one who does not claim under any of the parties to it, either as a privy in land or as a privy in estate, but under a title wholly independent of them.' 48 Ga., 329. In the case of Hanks, Adm't vs. Phillips, it was ruled: "Recitals in a private deed only bind parties and privies, and are not evidence against one not claiming under the deed.' 39 Ga., 550. A like ruling was also had in 40 Ga., 479. In the case of Penrose vs. Griffith, 4 Binney (Penn. Rep. 231, it was held: 'A deed containing recital of another deed, is evidence of the recited deed against the grantor, and all persons claiming by title derived from him subsequently; **but it is not evidence against one who claims from him by title prior to the deed which contains the recital, nor is it evidence against a stranger'." Black face supplied).**

And also in conflict with the ruling in the case of Flournoy v. Highlands Hotel Co., 170 Ga., 467, where the Supreme Court of Georgia, at page 471, held:

"There is no such doctrine known to the law as a set-off of wrongs. Not even estoppel can legalize or vitalize that which the law declares unlawful and void. If so, the conduct of individuals, whether independently or collusively, could render any and all laws invalid and impotent."

In the instant case there was not the slightest semblance of fraud on the part of Mrs. Meeks, and yet the decision of the Court held that she had ratified, by her conduct, something that was "absolutely unlawful and void", to wit, a

forged lease. We respectfully submit that this ruling of the Georgia Supreme Court in effect adopts the decision of Shinew v. First National Bank, 84 Ohio State Rep., 297, 95 N. E., 881, 36 L. R. A. (N. S.) 1006, as the law of Georgia, where it was held:

> "A forged instrument is not merely voidable, but absolutely void, and there can be no ratification of a forgery that will make the instrument valid."

Also, Owsley v. Phillips, 78 Ky. 517, 39 Am. Rep. 258, where it was said:

> "The doctrine that one may ratify a forged instrument by a subsequent promise to pay, we are not disposed to adopt, although cases may be found sustaining that view of the question. To say that one who is neither the recognized agent of, nor doing business for another, can sign the latter's name to an obligation for money, in which he is in no wise interested, without any authority whatever, and then make him responsible upon what is designated a ratification, and for no other reason, is, we think, a principle fraught with too much danger, even to those who engage in the ordinary business transactions of life, to be sanctioned by this Court."

The ruling of the United States Circuit Court of Appeals is also contrary to the ruling laid down in the case of McCalla v. American Freehold &c. Co., 90 Ga., 113, where it was held:

> "If a conveyance under seal be executed by a person without authority, written or verbal, no ratification of

the same save one in writing and under seal will be effectual in behalf of any person **who has not acted upon the ratification** in a way to make the law of estoppel applicable for his protection." (Black face supplied).

The fact that the security deed was under seal, the holders of the forged lease were not parties or privies thereto, and could claim no benefit therefrom. Neither is there anything in the record to show that Mrs. Meeks did anything to cause the lessees in the forged lease to expend anything upon the faith thereof, and yet they are permitted under the ruling of the Court to reap the reward of their own wrong.

In the case of Johnson v. Ellis, 172 Ga., 435, the Supreme Court of Georgia held:

> "Since the whole doctrine (of estoppel) is a creature of equity and governed by equitable principles, it necessarily follows that the party who claims the benefit of an estoppel must not only have been free from fraud in the transaction, but must have acted in good faith and reasonable diligence; otherwise no equity will arise in his favor."

In the case of Harris & Mitchell v. Amoskeag, 101 Ga., 641, the Supreme Court of Georgia on page 643, held:

> "There is one general rule, which is applicable alike to estoppel by record, by deed, and to equitable estoppel or estoppel in pais: that is, that estoppels must be mutual. Strangers can neither take advantage of, nor be bound by an estoppel; its binding effect is between the immediate parties, their privies in blood, in law and by estate."

These rulings are apposite to the situation here. Whatever took place between Mrs. Meeks and the grantees in the security deed, and the lesses under the forged lease, was subsequent to the date of the forged lease, and therefore no ratification or estoppel could be claimed by the lessees.

The Supreme Court of Georgia in the case of Cooper v. Delk, 108 Ga., 550, on page 553 laid down this rule:

> "These statements (referring to statements there involved) can not be relied on as an estoppel against Mrs. Cooper, because they were made after the sale took place, and the defendant could not, of course, have acted on them to his injury."

In Coldwell Company v. Cowart, 138 Ga., 233, at page 237 the Supreme Court of Georgia laid down this rule:

> "Where a distinct statement of a particular fact is made in the recital of a bond or other instrument under seal, and a contract is made with reference to that recital, it is not, as between the parties to the instrument, and in an action upon it, competent to the party bound to deny the recital; and a recital in an instrumment not under seal may be such as to be conclusive to the same extent. But a party to an instrument is not estopped, in an action by another party, not founded on the deed, and wholly collateral to it, to dispute the facts so admitted; but evidence of the circumstances under which such admission was made is receivable to show that the admission was inconsiderately made, and is not entitled to weight as a proof of the fact it is used to establish."

If there had been a direct ratification of this forged lease, and it had run to the lessees therein, the question would be quite different, but what was done in reference thereto,

was done, as Judge McCord in his dissenting opinion, stated:

> "She could not effect this loan with the unauthorized lease sticking out on the record like a sore thumb, so she recognized the lease in the security deed and assigned to the bank all rights under it."
>
> "After the loan had been consummated, the appellee came forward with its forged instrument and offered to pay a rental and a certain sum of money which it did not owe to Mrs. Meeks and which had never been the subject of a contract with her. When the payment was refused by appellant, the money was paid into court. Appellant thereby, notwithstanding the forgery of Meeks, the false witnessing of its agent and his improper procurement of the Notary's certificate, sought to make the invalid lease a valid one by virtue of the recognition contained in the security deed from Mrs. Meeks to the Land Bank. When appellee sought to have the lease recognized, Mrs. Meeks immediately paid off the security deed.
>
> Any recognition of the forged lease was made solely for the purpose of securing a loan, and was made in the contract between Mrs. Meeks and the Land Bank—a contract to which appellee was not a party. There was no communication by Mrs. Meeks to appellee of a recognition or ratification of the lease, and no benefit of any kind flowed from appellee to Mrs. Meeks, who has never received, or agreed to receive, one cent as compensation for the lease."

See Balfour v Hopkins 93 Fed. at 569.

Under these circumstances it is respectfully submitted the lower court's decison runs counter to every principle laid

down by the Courts to prevent one from profiting by his own wrong.

> "An estoppel by recitals can not be set up in favor of a stranger to the deed, in an action wholly collateral to it." 10 R. C. L. page 685, Sec. 15.

There was no privity in estate of Taylor, and the Federal Land Bank, and to indulge respondent in the present case would be, as stated by Judge Bleckley, in Parrott v. Baker, 82 Ga., 373:

> **"Were such indulgence accorded him, the rule of public policy sought to be subserved by visiting losses upon the contrivers and perpetrators of fraud, and thereby discouraging attempts at fraud, would in a great degree be nugatory." (Black face supplied).**

It is therefore respectfully submitted that the majority opinion of the Court runs counter to all the principles laid down in the above decisions. The dissenting opinion of Judge McCord so clearly states the facts and proper conclusions of law, we insist it should have been the decision of the entire Bench.

We call attention to the fact that in the majority opinion it is conceded that Mrs. Meeks repudiates the lease, for it was said:

"She could repudiate the whole lease, as she soon did." And then goes on to hold that "A ratification once made may not be revoked." Citing Georgia Code Sec. 4-303.

What was Mrs. Meeks to do? She had already repudiated the lease, and notified the lessees of such repudiation. Was she to stand constant guard of her every act in dealing with her own property, lest she might unwittingly ratify another's forgery?

The Supreme Court of Georgia in discussing the necessity of giving notice again where one already had notice, said:

> **"When one already has notice, where the necessity of repeating that notice?"** (Black face ours). Brown v. Tucker, 47 Ga., page 491.

We insist that this applies with equal force where one has already repudiated a forged lease and has given notice of such repudiation. Why should one be constantly repeating such repudiation? Can the holder of that forged lease, which he initiated and consummated, lurk in the dark and pounce upon the slightest act of the owner of the land in dealing with others, and then turn that act into a shield called "ratification" and thereby profit by his own wrong?

WHEREFORE Petitioner prays the grant of a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, and that the judgment of that court be reversed.

Respectfully submitted,

Douglas, Georgia.

Augusta, Georgia.

Attorneys for Petitioner.

The facts in the foregoing petition are true to the best of my knowledge and belief; and in my opinion, the assign-

ments of error are meritorious and present questions of such public concern, and of gravity and importance, as would warrant the issuance of a Writ of Certiorari.

This.....day of December, 1943.

Augusta, Georgia.

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Of Counsel for Petitioner.